Supreme Court, U.S.
FILED
101142 NOV 29 2010
No.
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Michael Selig, MD, FACC.

Plaintiff Pro Se

v.

Robert Roeshman, DO.
Defendant

On Petition for WRIT OF CERTIORARI to the Supreme Court of Pennsylvania Decision to Dismiss

PETITION FOR WRIT OF CERTIORARI

THE WITNESS IMMUNITY DOCTRINE

Michael B Selig, MD, FACC.
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Questions Presented for Review

1. Is it the intent of the Witness Immunity Doctrine to shield an exculpatory witness, who knowingly plotted and gave deliberate and intentional false expert opinion and testimony to the court?

2. Is it the intent of the Witness Immunity Doctrine to protect witnesses who intentionally create, fabricate and falsify records to willfully present as evidence to the court?

3. Should the expert witness be held liable to the same standards that he is required to uphold, under his license to practice medicine?

4. Can a sibling be an unbiased expert witness due to their dual relationship?

5. Can a sibling be an expert witness when the co-conspirator is employed in the expert witness's own office?

Parties to the Proceeding

Michael Selig, MD will be represented *pro se*

James Huber, Esquire
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Suite 101
Allentown, PA. 18103

will be representing the Defendant.

Robert Roeshman, DO.

There is no known corporation, parent corporation or subsidiary listings.

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I. TABLE OF AUTHORITIES

Witness Immunity Doctrine

Panitz v. Behrend

Clodgo v. Bowman

LLMD of Michigan, Inc. vs Jackson-Cross Co. 559 Pa.297, 740 A.2d 186 (1999) the **Supreme Court of Pennsylvania**

Forge Inc. v. Arthur Young & Co.

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II. INDEX OF APPENDICES

Supreme Court of Pennsylvania Order of November 1, 2010

Lehigh County Common Pleas Court Order by Judge Johnson of November 12, 2009

III. STATEMENT OF JURISDICTION

The Supreme Court of the United States has jurisdiction of this matter pursuant to Section 763 of the Judicial Code, relevant to the final order of November 1, 2010 by the Supreme Court of Pennsylvania to dismiss case **120 MM 2010.**

IV. STATEMENT OF SCOPE AND STANDARD OF REVIEW

Plaintiff, MICHAEL B. SELIG, MD, FACC, whom avers and files the following Writ of Certiorari for

Allowance of Appeal of case **120 MM 2010** on the basis that the Pennsylvania Supreme Court, in that decision to dismiss, inadvertently supported shielding a defendant's intentional misrepresentation and deception to the court by granting defacto total, complete and unconditional witness immunity. The plaintiff requests that the Court seek evaluation of the merits and substance of this case that was dismissed prematurely without discovery, trial or assessing the multiple infractions and breaches by the defendant, including intentional contempt of the court, fraudulent production of fabricated medical records and testimony, while being an expert witness for his sibling.

V. STATEMENT OF FACTS

Defendant was served with the above referenced complaint on June 26, 2009, enclosed within are claims supporting negligence, fraud, perjury,

extortion, collusion, civil conspiracy, malfeasance, breach of duty and conduct, reckless conduct; all deviations from acceptable medical standards, abuse of process and discretion.

On November 12, 2009, the Honorable Judge Brian Johnson issued an order to dismiss case # 2009-C-3269, citing the protection under the doctrine of witness immunity. The dismissal order was issued without a teleconference, a hearing or receiving testimony; resulting in the judge canceling the prior scheduled conference for December 22, 2009.

A Motion for Reconsideration was filed on January 19, 2010, by plaintiff. An addendum with additional data to the Motion for Reconsideration was filed on January 20, 2010, arguing intentional court misrepresentation by defendant. Robert Roeshman, D.O. conspired with his sibling, Gail Roeshman (hereinafter co-conspirator), to extort monies from

plaintiff by claiming multiple, unsubstantiated and false medical disabilities with the intent to receive lifelong alimony that both would share. In fact, the co-conspirator had documented indisputable, inactive disease for over 20 years in his testimony, without receiving care from an accredited tertiary care center, never presented for an emergency room evaluation, was never hospitalized for these alleged claims, never had Surgery; yet claimed said disabilities. Defendant was previously found NOT CREDIBLE by the court but at a cost to plaintiff to defend exceeding $80,000 dollars. Defendants "Medical License was put on notice" by the PA Department of State, Prosecuting Attorney's Office. The state cited defendant for not keeping medical records during his 30 year treatment period of co-conspirator, just prior to his fabrication of medical records for court purposes supporting these disabilities.

An appeal was filed with the Superior Court. On April 30, 2010, the Superior Court issued an order requesting certified records and briefs to be filed before June 8, 2010, however without any further correspondence on May 10, 2010 the Superior Court issued a Quash Sua Sponte order. On July 1, 2010 an appeal was filed to the Supreme Court of Pennsylvania regarding the above captioned complaint. On November 1, 2010, the Petition for Allowance of Appeal, was treated as a Petition for Review and DENIED.

Plaintiff hereby pleads to the United States Supreme Court.

VI. STATEMENT OF QUESTIONS INVOLVED

1. Can a sibling be an unbiased expert witness due to inherent conflicts of interest? Suggested Answer: No

2. Can a sibling be an expert witness when a co-conspirator is employed in the defendant's own office? Suggested answer: No

3. Is it reasonable, proper and acceptable for any patient to produce and fabricate their own medical record to be used in court, signed off by the sibling expert witness? Suggested Answer: No

4. Can defendant be an expert witness for the co-conspirator, when the two (2) share and financially benefit from joint bank accounts? Suggested Answer: No

5. Should the court take action and hear the case concerning a witness protected under unfair manipulation, a conspirator with deliberate and clear intent to deceive, maliciously gave false evidence and false witness testimony in court? Suggested Answer: Yes

6. Is it the intent of the witness immunity doctrine to shield any defendant as an exculpatory witness, who knowingly gave deliberate and intentional false expert opinion and testimony for a co-conspirator? Suggested Answer: No

7. Is it the intent of the Witness Immunity Doctrine to protect witnesses who intentionally create, fabricate and falsify records to willfully present as evidence to court? Suggested Answer: No

8. Has due process been compromised in this case, the right to fair administration of law been challenged and the right to a fair hearing been denied under the 14th Amendment? Suggested Answer: Yes.

9. Should the defendant be held liable to the same standards that he is required to, under his license to practice medicine? Suggested Answer: Yes.

10. Should the defendant be held liable for plaintiffs cost of litigation exceeding Eighty thousand dollars ($80,000) for his breaches in conduct? Suggested Answer: Yes.

VII. STATEMENTS OF ARGUMENT

The primary reason cited for case dismissal was the witness immunity doctrine. While witness immunity is valid in the preponderance of cases, when intentional manifestation and presentation of false information occurs, those acts are contrary to the interests of justice and speak to the unfair manipulation of the witness immunity doctrine. In a reversal of justice, this type of protection shields an untruthful witness as in this case of civil conspiracy. In light of this, what action can be taken against a witness who deliberately and maliciously gives false evidence in court? Prior filed documents cited several cases that allowed shielding,

unconditional and/or unobstructed immunity. The Honorable Judge Johnson mentioned 2 cases in the footnote of his order.

In **Panitz v. Behrend**, 429 Pa. Super. 273, 632 A.2d 562 (Pa. Super. 1993) the Superior Court declined to hold an expert witness liable where she admitted on cross-examination that some of her testimony was inaccurate. While experts may be sued for professional negligence, experts may not be sued by a party whom is simply "dissatisfied with the substance of the opinion rendered by an expert." Therefore, the Court's limited holding will NOT expose experts to liability when his opinions are challenged by "another expert or authoritative source."

The defendant in this case has been shown that his competence and judgment was in question and in the expert witness testimony of Robert Roeshman, DO, it

was apparent that several actions were contributory to making him an untruthful witness; intentionally and knowingly deceiving the court to support his siblings claims:

1. Robert Roeshman, D.O. was not a neutral independent party.
2. He provided testimony for the co-conspirator, Gail Roeshman, his own sibling.
3. The co-conspirator was a salaried employee in Robert Roeshman, D.O.'s office.
4. Together, Robert Roeshman, D.O. and the co-conspirator prepared and fabricated medical records with conscious and willful intent to deceive the court.
5. Robert Roeshman DO. and his sibling wittingly and willfully fabricated and falsified medical records, signed off by defendant and submitted them to the court, with intent to deceive the court into granting life long financial accommodations to the co-conspirator, from the plaintiff, for those medical disabilities.
6. The conspirators were willing to put into print anything that would support their case for medical disabilities without substance, merit or evidence.
7. Prior to the fabrication of these records retrospectively, Robert Roeshman, D.O treated the co-conspirator without any medical records for over 30 years.
8. Robert Roeshman, D.O. misrepresented his credentials before the court and had no credentials to perform disability/impairment ratings.

9. Robert Roeshman, D.O. diagnosed the co-conspirator with 3 advanced diseases, first with migraine headaches. When the evidence became non-supportive they then introduced back pain syndrome, then attention deficit disorder.
10. Robert Roeshman , DO. testified to a permanent-partial disability rating when in fact the sibling had irrefutable inactive diseases.
11. Conspirator Robert Roeshman, D.O. and co-conspirator Gail Roeshman share two (2) joint bank and investment accounts and both stood to benefit financially from a financial judgment.
12. Robert Roeshman, D.O. was an untruthful witness and intentionally presented incriminate and false testimony.

All such conduct is contrary to the intent and spirit that is afforded under the immunity protection doctrine and the overreaching application of immunity. Therefore, this case goes beyond being "dissatisfied" with an opinion put forth by a witness. It speaks to the heart of willfully plotting, lying, deceit, exploitation and a grave miscarriage of justice. It is the converse of what the immunity doctrine intended, when the law protects a witness who knows they are acting in contempt of court because they consciously

and deliberately provided false information in the court, by witness statement verification and by a statement of truth or sworn affidavit.

In **Clodgo v. Bowman**, 411 Pa. Super. 267, 601 A.2d 342 (Pa. Super. Ct. 1992), the witness was insulated from liability premised upon medical malpractice, because they were court-appointed witnesses. The differences were based between privately retained experts, who were at issue in LLMD and court-appointed experts, which are at issue in the Clodgo case. Court-appointed experts hold a unique role in judicial proceedings, because they work on behalf of the court rather than for any one party, court-appointed experts provide unbiased, neutral party information and recommendations and aid the court in its decision-making process. These experts are of known and established competence within the community. This neutral information is essential to the

court, which cannot make necessary observations and gather relevant facts without assistance. Thus, it is crucial to the judicial process that court-appointed witnesses are free to formulate and make recommendations unhindered by the fear of liability. Without such immunity, these "advisors" may be reluctant to assist the court, thereby depriving the court of its sole source of neutral information.

There would be no "great mischief" in allowing this case to speak for itself. The only animadversion would be for the court not to hold the defendant responsible for his apparent contempt actions and/or breaches under the law. As referenced in **LLMD of Michigan, Inc. vs Jackson-Cross Co. 559 Pa.297, 740 A.2d 186 (1999)** the **Supreme Court of Pennsylvania** upheld that the doctrine of witness immunity does not protect expert witnesses who are negligent in forming their opinions. Therefore, the witness immunity doctrine

sibling, with his sibling's assistance and participation, since she was employed by him.

In **Rino v. Mead**, 2002 WY 144, 55 P.3d 13 (Wyo. 2002), the court also allowed malpractice claims against attorney's for negligence in retaining experts for trials.

"If expert witnesses are professionals," why shouldn't they be held to the same standard of care of their profession as doctors or lawyers? In five of the seven states where friendly experts have been sued over their testimony-California, Connecticut, Missouri, Pennsylvania and Texas -litigation has been allowed to proceed. Only in Louisiana and Washington have the courts held that friendly experts are absolutely immune from liability.

The eighth state known to have addressed the issue, New Jersey, is unique. It is the only state in which the state supreme court has held that a court-

appointed expert is not immune from liability for deviating from the accepted standards applicable to his or her profession. **Levine v. Wis & Co.**, 97 N.J. 242.

In **James v. Brown**, 637 S.W. 2d 914, the court also stated that experts can be sued for negligence resulting from their misdiagnoses and the mere fact that those diagnoses became the subject of testimony in a lawsuit did not insulate the doctors from liability in a negligence action.

The Pennsylvania Supreme Court held that an expert hired by a developer to calculate lost profits from a failed real estate venture could be sued for negligence. The expert allegedly made a mathematical error that completely undermined the basis for his calculations, forcing the developer to settle a lawsuit against the lender for a fraction of its actual losses.

Connecticut became the fifth state to recognize an exception to the witness immunity doctrine for a friendly expert. A Superior Court judge in New Haven refused to dismiss a lawsuit against a Yale University professor accused of failing to competently provide litigation support services. The expert was held liable, too. **ABA Journal**, Nov 2000 Page 3 of 3. In an unreported decision, Judge Bruce Levin said the policy on which witness immunity is based-allowing witnesses to speak freely-was not implicated by the allegations against the professor, who essentially was accused of not doing what he had been hired to do. **Pollock v. Panjabi**, No. 402199, May 17, 2000.

In **United States v. Dunnigan**, 507 us. 87,94 1993, the defendant willfully tried to impede and obstruct the administration of justice. Perjury was committed when the witness testified under oath of affirmation of

giving false testimony concerning a material matter with willful intent to provide false testimony. The witness was held liable. This is the case as it pertains to Robert Roeshman.

Although the principle of witness immunity is a privilege, able to be realized by a witness, for all intents and purposes protects them from civil proceedings with respect to evidence given by them in a legal proceeding; the Pennsylvania Supreme Court has expanded the liability of expert witnesses to include negligence in the preparation of testimony. The Supreme Court made the distinction between "***substance***" and "***preparation***" to avoid overruling the older ruling in the Panitz case.

Defendant's statements concerning his co-conspirator disabilities are diametrically incorrect compared to evidence given. The Fifth Circuit has stated, "the hallmark of an inconsistent statement

offered to impeach a witness's testimony is that the statement... is not offered for the truth of the matter asserted and therefore unreliable. Thus, the defendant cannot argue that his untruthful testimony is exculpatory, therefore not shielded and his testimony should have impeached the co-conspirator, defendant. Application of witness immunity is thereby procedural overreaching and manipulation of the immunity grant.

The courts may go back to the old rule designed for unpaid witnesses or they can follow the trend in the LLMD case and extend malpractice liability to experts who do not perform within the standard of their profession. Since the rule, the LLMD case promotes the presentation of reliable expert testimony better, which will probably be widely adopted by the courts.

The court has been silent on whether liability is limited to the party hiring the expert or to anyone who

is injured by the expert. If the liability is based on the contract between the expert and the party employing the expert, then it is reasonable to expect that only the employing party could sue. If liability is based on a tort theory of malpractice, then it is reasonable for the opposing party injured by the negligence, could sue the expert.

The outcome for a court adopting this rule is reliable expert testimony. Moreover, principles of collateral estoppels should bar suits based on lawsuits that were lost because of inaccurate testimony by the other party's expert. In addition, the option of suing the lawyer who allowed inaccurate testimony happen is another available option.

The court must consider the mitigating circumstances of this case because the integrity of the sibling expert witness from the onset was suspect

and corrupt, the ongoing intentional deceptive testimony for his sibling was negligent and the potential shared financial gain to both was obvious, with a cost to litigate exceeding $80,000 dollars to the plaintiff. The use of expert witnesses rests on the importance of honesty and accuracy when making witness statements, giving evidence in general, as well as the value of the statement of truth. The Doctrine of Witness immunity currently affords sufficient protection to witnesses, however for those witnesses who are untruthful, deceptive and/or negligent; it makes these witnesses publicly accountable for their behavior. Accordingly, these witnesses cannot rely on the immunity to avoid proceedings for contempt, even if these proceedings are brought by a private person.

There also appears in this case to have been several violations of due process, the right to fair

administration of law in accordance with established procedures, the right to a fair hearing, thus plaintiffs due process has been violated under the 14th Amendment.

VIII. CONCLUSION

There is clear evidence that Robert Roeshman committed multiple acts during his role as a expert witness including: abuse of process and discretion, misfeasance, negligence, fraud, perjury, extortion, collusion, conspiracy and deceitful testimony in this case, all elements not worthy of witness immunity and therefore puts the witness at risk for liability by his selection. The sibling witness and the selecting attorney are therefore liable for the costs to the plaintiff to defend against this frivolous conduct. The court in addition did not allow discovery, properly

weigh the evidence, did not allow a trial and thereby prematurely dismissed the case.

WHEREFORE, the plaintiff, Michael B. Selig, MD, FACC, prays that this Honorable Court will:

1. remand the case back to the Lehigh County Common Pleas court.

2. allow for a proper trial and discovery to determine the actual substance and merits of this case.

Respectfully Submitted,

Michael B. Selig, MD, FACC.

M. Selig
1-25-11

Date_____

IN THE SUPREME COURT PENNSYLVANIA
MIDDLE DISTRICT

No. 120 MM 2010

Michael Selig, MD, FACC. v. Robert Roeshman, D.O.

ORDER

PER CURIAM

AND NOW, this 1st day of November, 2010, the Petition for Allowance of Appeal, treated as a Petition for Review, is **Denied.**

Attest November 1, 2010

"S/" Elaine Hellen, Assistant Chief Clerk

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA-CIVIL DIVISION

NO. 2009-C-3269

MICHAEL B. SELIG, M.D.,
Plaintiff.
v.
ROBERT M. ROESHMAN, D.O.
Defendant.

ORDER

AND NOW, this day 10th of November, 2009, upon consideration of the Defendant's Preliminary Objections filed on September 3, 2009;

IT IS HEREBY ORDERED that the preliminary objection regarding the witness immunity doctrine is hereby SUSTAINED and the Petition of the Plaintiff filed on June 26, 2009 is DISMISSED with prejudice[1] ; and

IT IS FURTHER ORDERED that the remaining preliminary objections are OVERRULED as moot and the Status Conference scheduled for December 22, 2009 is CANCELLED.

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[1] As the Defendant is immune from suit under the witness immunity doctrine, the remaining preliminary objections are moot. As a general rule, there is no civil liability for statements made during trial. See Panitz v. Behrend, 429 Pa. Super. 273, 632 A.2d 562 (1993). Said privilege applies to witnesses. Id. at 277, 632 A.2d at 564. "The form of the cause of action is not relevant to application of the privilege. Regardless of the tort contained in the complaint, if the communication was made in connection with judicial proceedings and was material and relevant to it, the privilege applies." Clodgo by Clodgo v. Bowman, 411 Pa. Super. 267, 273, 601 A.2d 342, 345 (1992).

BY THE COURT:

"S/" J Brian Johnson. J.

IN THE SUPERIOR COURT OF PENNSYLVANIA

(C.P. Lehigh County No.2009-C-3269)
No. 650 EDA 2010
Filed: May 10, 2010

Michael B Selig, MD., FACC.
v.
Robert M . Roeshman, DO.

ORDER

This appeal has been taken from the March I, 2010 order granting the defendant's motion to dismiss the motion for reconsideration filed by the plaintiff. The plaintiff apparently sought reconsideration of the November 10, 2009 order dismissing the underlying matter.

The underlying November 10th order appears to have been final and appealable. **See Pa.R.A.P.3 47(b)(1)** (a final order is any order that disposes of all claims and parties). Therefore, an appeal should have been filed within 30 days of its entry on the trial court docket. **See Pa.R.A.P.903(a)** (notice of appeal shall be filed within 30 days after entry of the order from which appeal is taken). Additionally, the denial of reconsideration is not subject to review on appeal. Cheathem v. Temple Univ. Hosp.,743 A.2d 518 (Pa. Super. 1999); Goodman By Goodman v. Pizzutillo, 682 A.2d 363 (Pa. Super.1996).

Accordingly, the appeal at No. 6 5 0 EDA 2010 is hereby QUASHED.
"S/" Per Curiam